

## Message Text

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----- 069054

P R 101703Z OCT 75

FM SECSTATE WASHDC

TO AMEMBASSY PRETORIA PRIORITY

INFO AMCONSUL CAPE TOWN

AMCONSUL DURBAN

AMCONSUL JOHANNESBURG

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E.O. 11652: N/A

TAGS: EINV, ELAB, SF

SUBJECT: REQUEST FOR GUIDANCE CONCERNING AMENDMENT TO  
FOREIGN COURTS EVIDENCE ACT

REF: A) CAPE TOWN A-87, MAY 21, 1975, B) STATE 35068,

C) A-138 DEC. 6, 1974

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1. AS NOTED IN REF B, HOUSE SUBCOMMITTEE ON CIVIL RIGHTS

AND CONSTITUTIONAL RIGHTS IS CURRENTLY IN PROCESS OF ACQUIRING INFORMATION ON EMPLOYMENT PRACTICES OF U.S. FIRMS OPERATING IN SOUTH AFRICA IN PREPARATION FOR HEARINGS ON PENDING LEGISLATION. (THIS PENDING LEGISLATION, IDENTICAL WITH BILLS INTRODUCED IN THE PAST, WOULD MAKE THE ESTABLISHMENT OF ENLIGHTENED EMPLOYMENT PRACTICES IN SOUTH AFRICA BY U.S. FIRMS WITH OPERATION IN THAT COUNTRY A CRITERION FOR ELIGIBILITY FOR U.S. GOVERNMENT CONTRACTS. WE HAVE CONSISTENTLY RECOMMENDED AGAINST PASSAGE OF SUCH LEGISLATION. WE CONTINUE TO BELIEVE THAT AVAILABILITY OF FACTS ON EMPLOYMENT PRACTICES OF U.S. FIRMS IN SOUTH AFRICA ON A VOLUNTARY BASIS IS BENEFICIAL BOTH TO COMPANIES AND TO SAG. THESE FACTS CAN HELP COUNTER SUBSTANTIAL BODY OF MISINFORMATION CURRENTLY IN CIRCULATION

CONCERNING STATUS OF BLACKS EMPLOYED BY FOREIGN FIRMS OPERATING IN SOUTH AFRICA.) IN PROCESS OF OBTAINING RELEVANT INFORMATION FROM U.S. COMPANIES, SUBCOMMITTEE STAFF MEMBERS HAVE BECOME CONCERNED AS TO WHETHER INFORMATION FURNISHED BY COMPANIES VIOLATES THE 1974 AMENDMENT TO FOREIGN COURTS EVIDENCE ACT.

2. IN LATE 1974, A QUESTIONNAIRE WITH A COVERING LETTER FROM SUBCOMMITTEE CHAIRMAN DON EDWARDS (COPIES BEING FORWARDED UNDER SEPARATE COVER) WAS SENT TO EACH OF THE OVER 300 U.S. FIRMS KNOWN TO HAVE OPERATIONS IN SOUTH AFRICA. QUESTIONNAIRE REQUESTED FOLLOWING SPECIFIC INFORMATION:

A) BREAKDOWN OF THE SIZE, NATURE AND LOCATION(S) OF COMPANY'S INVESTMENTS IN SOUTH AFRICA;

B) NUMBER OF EMPLOYEES AT EACH UNIT, CLASSIFIED BY GRADE AND/OR FUNCTION, WITH RACIAL BREAKDOWN FOR EACH CLASSIFICATION;

C) BASIC WAGE-RATE BREAKDOWN FOR EACH CLASSIFICATION;

D) PRACTICES RELATING TO FRINGE BENEFITS, TRAINING FACILITIES, AND PAYROLL DEDUCTIONS FOR ALL CLASSIFICATIONS;  
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E) COMPANY'S VIEWS ON CONCEPT OF THE POVERTY DATUM LINE, BOTH IN GENERAL AND IN RELATION TO COMPANY'S PARTICULAR WAGE LEVELS;

F) FOR EACH UNIT, EXTENT AND NATURE OF CONTROL EXERCISED BY PARENT COMPANY;

G) ANY OTHER INFORMATION COMPANY THOUGHT WOULD BE HELPFUL.

3. CONGRESSIONAL STAFF MEMBERS STRESSED TO DEPARTMENT OFFICER THAT RESPONSES WERE ENTIRELY VOLUNTARY. FYI: VOLUNTARY NATURE OF RESPONSES MIGHT BE OPEN TO SOME QUESTION SINCE LETTER COVERING QUESTIONNAIRE STATED IN PART AS FOLLOWS: QUOTE -THE SUBCOMMITTEE HAS ALREADY HELD SEVERAL DAYS OF HEARINGS ON THE MATTER AND, IN AN EFFORT TO AVOID THE NUMEROUS ADDITIONAL SESSIONS WHICH WOULD BE REQUIRED WERE WE TO FERRET OUT THE INFORMATION REQUESTED IN THE QUESTIONNAIRE SOLELY WITHIN THE HEARING CONTEXT, I AM ASKING THAT YOUR RESPONSE BE SUBMITTED NO LATTER THAN DECEMBER 6, 1974. -UNQUOTE. (MOST RESPONSES WERE NOT RECEIVED UNTIL WELL INTO 1975.) STAFF MEMBERS

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ADMITTED THAT THERE WAS IMPLIED THREAT IN THE LETTER TO SUBPOENA COMPANY EXECUTIVES BEFORE SUBCOMMITTEE FOR LENGTHY HEARINGS, WHICH MADE RESPONSES SOMEWHAT LESS THAN TOTALLY VOLUNTARY. END FYI.

4. SEVERAL COMPANIES DECLINED TO PROVIDE REQUESTED INFORMATION ON GROUNDS THAT TO DO SO COULD PLACE THEM IN VIOLATION OF SOUTH AFRICAN LAW. FOLLOWING EXCERPT FROM LETTER FROM ONE SUCH COMPANY TO SUBCOMMITTEE IS ILLUSTRATIVE OF THIS CONCERN: QUOTE -- THE PROHIBITIONS CONTAINED IN SECTION 2 OF THE GENERAL LAW AMENDMENTS ACT NO. 94 OF 1974 MANDATE SEVERE PENALTIES FOR THOSE CORPORATE OFFICERS WHO FURNISH SUCH INFORMATION. IN VIEW OF THIS CONFLICT OF LAWS, WE ARE RELUCTANT TO FURNISH THE INFORMATION REQUESTED BY YOUR LETTER OF NOVEMBER 1, 1974 AND THEREBY SERIOUSLY IMPERIL THE PERSONAL LIBERTY OF THE OFFICERS OF OUR SOUTH AFRICAN LIMITED OFFICIAL USE

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COMPANY. IN OUR DESIRE TO BE COOPERATIVE WITH THE SUBCOMMITTEE'S INVESTIGATION, WE WOULD WELCOME GUIDANCE FROM YOU AS TO THE NATURE OF OUR RESPONSE IN VIEW OF THE PROHIBITIONS CONTAINED IN SECTION 2 -- UNQUOTE.

5. STAFF MEMBERS OF THE SUBCOMMITTEE HAVE INFORMED DEPARTMENT THAT TO DATE NEARLY 100 FIRMS HAVE RESPONDED TO QUESTIONNAIRE WITH VARYING DEGREES OF COMPLETENESS. ORIGINALLY, ACCORDING TO THESE STAFF MEMBERS, SUBCOMMITTEE HAD PLANNED TO PLACE COMPLETED QUESTIONNAIRES IN THE CONGRESSIONAL RECORD, BUT NOW CHAIRMAN EDWARDS IS REPORTEDLY CONCERNED AS TO WHETHER PUBLICATION OF SUCH INFORMATION WOULD RENDER RESPONDING COMPANIES LIABLE TO PROSECUTION UNDER THE 1974 AMENDMENT TO THE FOREIGN COURTS EVIDENCE ACT CONCERNING RESTRICTION ON DISCLOSURE

OF COMPANY INFORMATION.

6. DEPARTMENT HAS PROVIDED SUBCOMMITTEE WITH PERTINENT MATERIAL CONTAINED IN REFS A AND C; HOWEVER, AS EMBASSY IS AWARE, PRECISE CLARIFICATION OF ACT AND IT IMPLICATIONS HAVE NOT BEEN FORTHCOMING FROM SAG, AND SOUTH AFRICAN OFFICIALS SEEM TO RETAIN CONSIDERABLE LATITUDE TO MOVE AGAINST FOREIGN FIRMS IN CASES WHERE THOSE FIRMS PROVIDE INFORMATION TO THEIR RESPECTIVE GOVERNMENTS.

7. ACTION REQUEST: IN HOPES OF CLARIFYING POSITION OF SAG AS TO TYPES OF INFORMATION, INCLUDING MATERIALS ON EMPLOYMENT PRACTICES, WHICH COMPANIES CAN FREELY PROVIDE, EMBASSY IS REQUESTED, PROVIDED IT DOES NOT PERCEIVE ANY SERIOUS OBJECTIONS, TO CONTACT APPROPRIATE SOUTH AFRICAN GOVERNMENT OFFICIALS AND ASCERTAIN

WHETHER AMERICAN COMPANIES PROVIDING INFORMATION REQUESTED BY THE CONGRESS WOULD AUTOMATICALLY BE SUBJECT TO THE PENALTIES OF THE FOREIGN COURTS EVIDENCE ACT AS AMENDED.

EMBASSY SHOULD POINT OUT THAT U.S. CONGRESS, VARIOUS USG AGENCIES AND MANY COMPANY SHAREHOLDERS ARE BECOMING INCREASINGLY INTERESTED IN EMPLOYMENT PRACTICES OF U.S. FIRMS OPERATING IN SOUTH AFRICA. YOU SHOULD NOTE TO SAG OFFICIALS THAT EFFORTS TO STOP OR REDUCE FLOW OF LIMITED OFFICIAL USE

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THIS TYPE OF INFORMATION BY INVOKING THE AMENDED FOREIGN COURTS EVIDENCE ACT WOULD PRESENT U.S. COMPANIES WITH THE UNWELCOME CHOICE OF EITHER VIOLATING SOUTH AFRICAN LAW OR OF BEING UNRESPONSIVE TO REQUEST FROM INTERESTED U.S. PARTIES AND POSSIBLY BEING FACED WITH SUBPOENAS

FROM CONGRESS IN PROCESS. MOREOVER, CRITICISM CONCERNING PRESENCE OF U.S. INVESTMENT IN SOUTH AFRICA WOULD DOUBTLESSLY GROW MARKEDLY. KISSINGER

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